

Judge John C. Coughenour

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SEP 26 2023

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JERRY WAYNE KOHL,

Defendant.

NO. CR21-174 JCC

PLEA AGREEMENT

The United States, through Acting United States Attorney Tessa M. Gorman and Assistant United States Attorneys C. Andrew Colasurdo and Michelle Jensen of the Western District of Washington and Jerry Wayne KOHL and his attorneys Chris Black and Sade Smith enter into the following Plea Agreement, pursuant to Federal Rule of Criminal Procedure 11(C)(1)(A) and 11(C)(1)(B).

1. **The Charge.** Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters a plea of guilty to Conspiracy to Distribute Controlled Substances, the lesser-included offense of that charged in Count 1 of the Second Superseding Indictment, in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(B), and 846.

By entering a plea of guilty, Defendant hereby waives all objections to the form of the charging document. Defendant further understands that before entering any guilty

1 plea, Defendant will be placed under oath. Any statement given by Defendant under oath  
2 may be used by the United States in a prosecution for perjury or false statement.

3       2.     **Elements of the Offense.** The elements of the offense of Conspiracy to  
4 Distribute Controlled Substances, the lesser-included offense of that charged in Count 1  
5 of the Second Superseding Indictment, in violation of Title 21, United States Code,  
6 Sections 841(a)(1), 841(b)(1)(B), and 846 are as follows:

7             a.     First, there was an agreement between two or more persons to  
8 distribute controlled substances, to wit methamphetamine; and

9             b.     Second, Defendant joined in the agreement knowing of its purpose  
10 and intending to help accomplish that purpose, that is the distribution of  
11 methamphetamine.

12       3.     **The Penalties.** Defendant understands that the statutory penalties  
13 applicable to the offense of Conspiracy to Distribute Controlled Substances, the lesser-  
14 included offense of that charged in Count 1 of the Second Superseding Indictment, in  
15 violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(B), and 846 are  
16 as follows:

17             a.     A maximum term of imprisonment of up to 40 years and a  
18 mandatory minimum term of imprisonment of 5 years;

19             b.     A fine of up to \$5,000,000.00;

20             c.     A period of supervision following release from prison of at least four  
21 years and up to life; and

22             d.     A mandatory special assessment of \$100.00.

23       If a probationary sentence is imposed, the probation period can be for up to five  
24 (5) years. Defendant agrees that the special assessment shall be paid at or before the time  
25 of sentencing.

26       **Drug Offense - Proof of Drug Quantity for Mandatory Minimum.** Defendant  
27 further understands that, in order to invoke the statutory sentence for the lesser-included  
28 drug offense charged in Count 1 of the First Superseding Indictment, the United States

1 must prove that Defendant's conduct as a member of the narcotics conspiracy charged in  
2 Count 1, which includes the reasonably foreseeable conduct of other members of the  
3 narcotics conspiracy charged in Count 1, involved 5 grams or more of methamphetamine,  
4 its salts, isomers, and salts of its isomers, and 50 grams or more of a mixture or substance  
5 containing a detectable amount of methamphetamine, its salts, isomers, or salts of its  
6 isomers. Defendant expressly waives the right to require the United States to make this  
7 proof at trial and stipulates as a part of this plea of guilty that Defendant's conduct as a  
8 member of the narcotics conspiracy charged in Count 1, which includes the reasonably  
9 foreseeable conduct of other members of the narcotics conspiracy charged in Count 1,  
10 involved 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers,  
11 and 50 grams or more of a mixture or substance containing a detectable amount of  
12 methamphetamine, its salts, isomers, or salts of its isomers.

13 Defendant understands that supervised release is a period of time following  
14 imprisonment during which Defendant will be subject to certain restrictive conditions and  
15 requirements. Defendant further understands that, if supervised release is imposed and  
16 Defendant violates one or more of the conditions or requirements, Defendant could be  
17 returned to prison for all or part of the term of supervised release that was originally  
18 imposed. This could result in Defendant serving a total term of imprisonment greater  
19 than the statutory maximum stated above.

20 Defendant understands that as a part of any sentence, in addition to any term of  
21 imprisonment and/or fine that is imposed, the Court may order Defendant to pay  
22 restitution to any victim of the offense, as required by law.

23 Defendant further understands that the consequences of pleading guilty may  
24 include the forfeiture of certain property, either as a part of the sentence imposed by the  
25 Court, or as a result of civil judicial or administrative process.

26 Defendant agrees that any monetary penalty the Court imposes, including the  
27 special assessment, fine, costs, or restitution, is due and payable immediately and further  
28

1 agrees to submit a completed Financial Disclosure Statement as requested by the United  
2 States Attorney's Office.

3 Defendant understands that, if pleading guilty to a felony drug offense, Defendant  
4 will become ineligible for certain food stamp and Social Security benefits as directed by  
5 Title 21, United States Code, Section 862a.

6 4. **Immigration Consequences.** Defendant recognizes that pleading guilty  
7 may have consequences with respect to Defendant's immigration status if Defendant is  
8 not a citizen of the United States. Under federal law, a broad range of crimes are grounds  
9 for removal, and some offenses make removal from the United States presumptively  
10 mandatory. Removal and other immigration consequences are the subject of a separate  
11 proceeding, and Defendant understands that no one, including Defendant's attorney and  
12 the Court, can predict with certainty the effect of a guilty plea on immigration status.  
13 Defendant nevertheless affirms that Defendant wants to plead guilty regardless of any  
14 immigration consequences that Defendant's guilty plea may entail, even if the  
15 consequence is Defendant's mandatory removal from the United States.

16 5. **Rights Waived by Pleading Guilty.** Defendant understands that by  
17 pleading guilty, Defendant knowingly and voluntarily waives the following rights:

- 18 a. The right to plead not guilty and to persist in a plea of not guilty;
- 19 b. The right to a speedy and public trial before a jury of Defendant's  
20 peers;
- 21 c. The right to the effective assistance of counsel at trial, including, if  
22 Defendant could not afford an attorney, the right to have the Court appoint one for  
23 Defendant;
- 24 d. The right to be presumed innocent until guilt has been established  
25 beyond a reasonable doubt at trial;
- 26 e. The right to confront and cross-examine witnesses against Defendant  
27 at trial;
- 28

1 f. The right to compel or subpoena witnesses to appear on Defendant's  
2 behalf at trial;

3 g. The right to testify or to remain silent at trial, at which trial such  
4 silence could not be used against Defendant; and

5 h. The right to appeal a finding of guilt or any pretrial rulings.

6 6. **United States Sentencing Guidelines.** Defendant understands and  
7 acknowledges that the Court must consider the sentencing range calculated under the  
8 United States Sentencing Guidelines and possible departures under the Sentencing  
9 Guidelines together with the other factors set forth in Title 18, United States Code,  
10 Section 3553(a), including: (1) the nature and circumstances of the offense; (2) the  
11 history and characteristics of Defendant; (3) the need for the sentence to reflect the  
12 seriousness of the offense, to promote respect for the law, and to provide just punishment  
13 for the offense; (4) the need for the sentence to afford adequate deterrence to criminal  
14 conduct; (5) the need for the sentence to protect the public from further crimes of  
15 Defendant; (6) the need to provide Defendant with educational and vocational training,  
16 medical care, or other correctional treatment in the most effective manner; (7) the kinds  
17 of sentences available; (8) the need to provide restitution to victims; and (9) the need to  
18 avoid unwarranted sentence disparity among defendants involved in similar conduct who  
19 have similar records. Accordingly, Defendant understands and acknowledges that:

20 a. The Court will determine Defendant's Sentencing Guidelines range  
21 at the time of sentencing;

22 b. After consideration of the Sentencing Guidelines and the factors in  
23 18 U.S.C. § 3553(a), the Court may impose any sentence authorized by law, up to the  
24 maximum term authorized by law;

25 c. The Court is not bound by any recommendation regarding the  
26 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines  
27 range offered by the parties or the United States Probation Department, or by any  
28 stipulations or agreements between the parties in this Plea Agreement; and

1 d. Defendant may not withdraw a guilty plea solely because of the  
2 sentence imposed by the Court.

3 7. **Ultimate Sentence.** Defendant acknowledges that no one has promised or  
4 guaranteed what sentence the Court will impose.

5 8. **Statement of Facts.** The parties agree on the following facts. Defendant  
6 admits Defendant is guilty of the charged offense:

7 Beginning at a time unknown, and continuing until on or about November  
8 2, 2021, the drug-trafficking organization charged in this case (the "DTO")  
9 distributed, and directed other associates to distribute, controlled substances,  
10 including methamphetamine, heroin, and fentanyl, in the Western District of  
11 Washington and elsewhere. Numerous individuals assisted the DTO with its drug  
12 trafficking activities. Some individuals supplied methamphetamine, heroin, and  
13 fentanyl, while others, including Defendant KOHL, helped redistribute those drugs  
14 to others in the Western District of Washington and elsewhere.

15 This conspiracy, and KOHL's role therein, is established by witness and  
16 informant accounts; recorded telephone calls; court-authorized interceptions of  
17 wire and electronic communications; controlled purchases of drugs by confidential  
18 sources; surveillance; seizures of drugs and cash; search warrants; and other  
19 evidence, only some of which is outlined below.

20 During the course of the investigation, KOHL regularly obtained multiple-  
21 pound quantities of methamphetamine from two different DTO redistributors  
22 (Redistributor 1 and Redistributor 2) who both had direct access to the DTO  
23 leader. For example, on June 26, 2021, KOHL obtained five pounds of  
24 methamphetamine from Redistributor 1. On July 14, 2021, he obtained another  
25 ten pounds of methamphetamine from Redistributor 1. On both September 22,  
26 2021, and September 29, 2021, KOHL obtained five pounds of methamphetamine  
27 from Redistributor 2. Once obtained, KOHL redistributed the methamphetamine  
28 to others in the Western District of Washington. KOHL was arrested on November  
2, 2021. During his arrest, agents recovered 323.5 gross grams of  
methamphetamine and the phone KOHL used to communicate with Redistributors  
1 and 2 during the intercepted communication.

Although the exact amount of drugs KOHL distributed, or conspired to  
distribute, is unknown, the parties agree that it was at least 11.663 kilograms of a  
mixture or substance containing methamphetamine



1 The parties agree that the Court may consider additional facts contained in the  
 2 Presentence Report (subject to standard objections by the parties) and/or that may be  
 3 presented by the United States or Defendant at the time of sentencing, and that the factual  
 4 statement contained herein is not intended to limit the facts that the parties may present to  
 5 the Court at the time of sentencing.

6 **9. Sentencing Factors.** The parties agree that the following Sentencing  
 7 Guidelines provisions apply to this case:

8 a. A base offense level of 34 under USSG §§ 2D1.1(c)(3) because the  
 9 offense involved at least 11.663 kilograms of a mixture or substance containing  
 10 methamphetamine; and

11 b. A two-level decrease under USSG § 3E1.1(b) if Defendant clearly  
 12 demonstrates acceptance of responsibility for his offense, as further explained in  
 13 Paragraph 11.

14 The parties agree they are free to present arguments regarding the applicability of  
 15 all other provisions of the United States Sentencing Guidelines. Defendant understands,  
 16 however, that at the time of sentencing, the Court is free to reject these stipulated  
 17 adjustments, and is further free to apply additional downward or upward adjustments in  
 18 determining Defendant's Sentencing Guidelines range.

19 **10. Early Application of Proposed Sentencing Guidelines Amendments to**  
 20 **USSG § 4C1.1 (Zero-Point Offender) and USSG § 4A1.1 (Status Points).** Defendant  
 21 may seek to benefit now from published proposed Amendments to the Sentencing  
 22 Guidelines that are favorable to defendants, but which are not scheduled to go into effect  
 23 until November 2023. Specifically, Defendant may seek to be sentenced as a Zero-Point  
 24 Offender, pursuant to published proposed Amendments to USSG § 4C1.1. Among other  
 25 benefits, the Amendments would award a two-offense-level reduction for defendants who  
 26 score zero criminal history points *and* meet all other criteria listed under USSG  
 27 § 4C1.1(a)(1)-(10). In addition, Defendant may seek to take early advantage of proposed  
 28 changes to how criminal history status points are assessed under USSG § 4A1.1(d). The

1 Amendments would assess only one criminal history point (instead of two) for  
2 commission of the instant offense while under a criminal justice sentence, and otherwise  
3 narrow the eligibility for that point. The Sentencing Commission has indicated it may  
4 make these Amendments retroactively applicable. Considering these expected revisions,  
5 during the interim period between now and the effective date, so long as these  
6 Amendments remain pending enactment but are not yet effective, the parties agree as  
7 follows:

8       The parties have no agreement as to whether Defendant qualifies as a Zero-Point  
9 Offender or qualifies for criminal history status points. Both parties are free to litigate  
10 their position on these issues in connection with sentencing. If the Court is inclined to  
11 sentence Defendant consistently with these proposed Amendments, the Court first must  
12 calculate the total offense level, criminal history category, and applicable sentencing  
13 range under the current version of the Sentencing Guidelines.

14       After that, if the Court determines that Defendant meets all criteria to qualify as a  
15 Zero-Point Offender under the proposed Amendments to USSG § 4C1.1, the United  
16 States will not object to the Court granting a two-level downward variance from the  
17 otherwise-applicable total offense level and otherwise treating Defendant as a Zero-Point  
18 Offender consistent with the proposed Amendments to USSG § 4C1.1 and Application  
19 Notes.

20       If the Court determines that Defendant is eligible to benefit from the revised  
21 criteria for calculation of status points under the proposed Amendments to USSG  
22 § 4A1.1(d), the United States will not object to the Court granting a variance from the  
23 otherwise-applicable criminal history category and treating Defendant as if they had  
24 fewer criminal history points, consistent with the proposed Amendments.

25       Defendant agrees that if the Court grants Defendant the benefit of early application  
26 of these proposed Amendments to USSG § 4C1.1 and/or § 4A1.1 at sentencing, then  
27 Defendant agrees that Defendant is not eligible for, and will not request, a post-  
28 conviction sentence reduction on the same basis, either on direct appeal or in any post-



1 conviction motion, if and when the Amendments go into retroactive effect. Defendant  
2 further acknowledges that if the Court explicitly finds that Defendant does not qualify for  
3 a sentencing benefit under these proposed Amendments to USSG § 4C1.1 and/or  
4 § 4A1.1, Defendant waives any right to appeal that denial on direct appeal or in a  
5 collateral attack or post-conviction motion pursuant to 28 U.S.C. § 2255, as further  
6 described in the paragraph of this Plea Agreement entitled “Waiver of Appellate Rights  
7 and Rights to Collateral Attack.”

8       **11. Acceptance of Responsibility.** The United States agrees that Defendant is  
9 eligible to have the offense level reduced by two levels for accepting responsibility,  
10 pursuant to USSG §§3E1.1(a). However, the United States will not move to apply the  
11 third level reduction, pursuant to USSG §§3E1.1(b), because Defendant did not timely  
12 notify the United States of his intention to plead guilty, thereby permitting the United  
13 States to avoid preparing for trial and permitting the Court to allocate its resources  
14 efficiently.

15       **12. Sentence Recommendation.** The United States agrees to recommend a  
16 term of imprisonment that is no longer than 78 months. Defendant understands that this  
17 recommendation is not binding on the Court and the Court may reject the  
18 recommendations of the parties and may impose any term of imprisonment up to the  
19 statutory maximum penalty authorized by law. Defendant further understands that  
20 Defendant cannot withdraw a guilty plea simply because of the sentence imposed by the  
21 Court. Except as otherwise provided in this Plea Agreement, the parties are free to  
22 present arguments regarding any other aspect of sentencing.

23       **13. Forfeiture.** Defendant understands that the forfeiture of property is part of  
24 the sentence that must be imposed in this case.

25       Defendant agrees to forfeit to the United States immediately any right, title, and  
26 interest in all property that constitutes or is traceable to proceeds of his commission of  
27 Conspiracy to Distribute Controlled Substances, the lesser-included offense of that  
28

1 charged in Count 1, as well as any property that facilitated the offense. All such property  
2 is forfeitable pursuant to Title 21, United States Code, Section 853.

3 Defendant agrees to fully assist the United States in the forfeiture of any  
4 forfeitable property and to take whatever steps are necessary to pass clear title to the  
5 United States, including but not limited to: surrendering title and executing any  
6 documents necessary to effect forfeiture; assisting in bringing any property located  
7 outside the United States within the jurisdiction of the United States; and taking whatever  
8 steps are necessary to ensure that property subject to forfeiture is not sold, disbursed,  
9 wasted, hidden, or otherwise made unavailable for forfeiture. Defendant agrees not to file  
10 a claim to any of this property in any federal forfeiture proceeding, administrative or  
11 judicial, that may be or has been initiated. Defendant also agrees he will not assist any  
12 party who may file a claim to this property in any federal forfeiture proceeding.

13 The United States reserves its right to proceed against any remaining property not  
14 identified in this Plea Agreement, including any property in which Defendant has any  
15 interest or control, if that property constitutes or is traceable to proceeds of his  
16 commission of Conspiracy to Distribute Controlled Substances, or facilitated that offense.

17 **14. Abandonment of Contraband.** Defendant also agrees that, if any federal  
18 law enforcement agency seized any illegal contraband that was in Defendant's direct or  
19 indirect control, Defendant consents to the federal administrative disposition, official use,  
20 and/or destruction of that contraband.

21 **15. Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,  
22 the United States Attorney's Office for the Western District of Washington agrees not to  
23 prosecute Defendant for any additional offenses known to it as of the time of this Plea  
24 Agreement based upon evidence in its possession at this time, and that arise out of the  
25 conduct giving rise to this investigation, and moves to dismiss the remaining counts  
26 charged against Defendant in the Second Superseding Indictment at the time of  
27 sentencing. In this regard, Defendant recognizes the United States has agreed not to  
28 prosecute all of the criminal charges the evidence establishes were committed by

1 Defendant solely because of the promises made by Defendant in this Plea Agreement.  
2 Defendant agrees, however, that for purposes of preparing the Presentence Report, the  
3 United States Attorney's Office will provide the United States Probation Office with  
4 evidence of all conduct committed by Defendant.

5 Defendant agrees that any charges to be dismissed before or at the time of  
6 sentencing were substantially justified in light of the evidence available to the United  
7 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant  
8 with a basis for any future claims under the "Hyde Amendment," Pub. L. No. 105-119  
9 (1997).

10 **16. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that, if  
11 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea  
12 Agreement and Defendant may be prosecuted for all offenses for which the United States  
13 has evidence. Defendant agrees not to oppose any steps taken by the United States to  
14 nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea  
15 Agreement. Defendant also agrees that, if Defendant is in breach of this Plea Agreement,  
16 Defendant has waived any objection to the re-institution of any charges that previously  
17 were dismissed or any additional charges that had not been prosecuted.

18 Defendant further understands that if, after the date of this Plea Agreement,  
19 Defendant should engage in illegal conduct, or conduct that violates any conditions of  
20 release or the conditions of confinement (examples of which include, but are not limited  
21 to, obstruction of justice, failure to appear for a court proceeding, criminal conduct while  
22 pending sentencing, and false statements to law enforcement agents, the Pretrial Services  
23 Officer, Probation Officer, or Court), the United States is free under this Plea Agreement  
24 to file additional charges against Defendant or to seek a sentence that takes such conduct  
25 into consideration by requesting the Court to apply additional adjustments or  
26 enhancements in its Sentencing Guidelines calculations in order to increase the applicable  
27 advisory Guidelines range, and/or by seeking an upward departure or variance from the  
28 calculated advisory Guidelines range. Under these circumstances, the United States is

1 free to seek such adjustments, enhancements, departures, and/or variances even if  
2 otherwise precluded by the terms of the Plea Agreement.

3 **17. Waiver of Appellate Rights and Rights to Collateral Attacks.**

4 Defendant acknowledges that, by entering the guilty plea required by this Plea  
5 Agreement, Defendant waives all rights to appeal from Defendant's conviction, and any  
6 pretrial rulings of the Court, and any rulings of the Court made prior to entry of the  
7 judgment of conviction. Defendant further agrees that, provided the Court imposes a  
8 custodial sentence that is within or below the Sentencing Guidelines range (or the  
9 statutory mandatory minimum, if greater than the Guidelines range) as determined by the  
10 Court at the time of sentencing, Defendant waives to the full extent of the law:

11 a. Any right conferred by Title 18, United States Code, Section 3742,  
12 to challenge, on direct appeal, the sentence imposed by the Court, including any fine,  
13 restitution order, probation or supervised release conditions, or forfeiture order (if  
14 applicable); and

15 b. Any right to bring a collateral attack against the conviction and  
16 sentence, including any restitution order imposed, except as it may relate to the  
17 effectiveness of legal representation.

18 This waiver does not preclude Defendant from bringing an appropriate motion  
19 pursuant to 28 U.S.C. § 2241, to address the conditions of Defendant's confinement or  
20 the decisions of the Bureau of Prisons regarding the execution of Defendant's sentence.

21 If Defendant breaches this Plea Agreement at any time by appealing or collaterally  
22 attacking (except as to effectiveness of legal representation) the conviction or sentence in  
23 any way, the United States may prosecute Defendant for any counts, including those with  
24 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea  
25 Agreement.

26 **18. Voluntariness of Plea.** Defendant agrees that Defendant has entered into  
27 this Plea Agreement freely and voluntarily, and that no threats or promises were made to  
28

1 induce Defendant to enter a plea of guilty other than the promises contained in this Plea  
2 Agreement or set forth on the record at the change of plea hearing in this matter.

3       19.   **Statute of Limitations.** In the event this Plea Agreement is not accepted  
4 by the Court for any reason, or Defendant breaches any of the terms of this Plea  
5 Agreement, the statute of limitations shall be deemed to have been tolled from the date of  
6 the Plea Agreement to: (1) thirty (30) days following the date of non-acceptance of the  
7 Plea Agreement by the Court; or (2) thirty (30) days following the date on which a breach  
8 of the Plea Agreement by Defendant is discovered by the United States Attorney's  
9 Office.

10       20.   **Completeness of Plea Agreement.** The United States and Defendant  
11 acknowledge that these terms constitute the entire Plea Agreement between the parties,  
12 except as may be set forth on the record at the change of plea hearing in this matter. This  
13 Plea Agreement binds only the United States Attorney's Office for the Western District  
14 of Washington. It does not bind any other United States Attorney's Office or any other  
15 office or agency of the United States, or any state or local prosecutor.

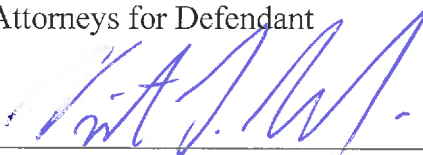
16       Dated this 26<sup>th</sup> day of September, 2023.

17 

18  
19 JERRY WAYNE KOHL  
Defendant

20 

21  
22 CHRIS BLACK & SADE SMITH  
Attorneys for Defendant

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25 VINCENT T. LOMBARDI  
26 Assistant United States Attorney  
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C. ANDREW COLASURDO  
Assistant United States Attorney



MICHELLE JENSEN  
Assistant United States Attorney

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